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The Present Status of Family Desertion and Non-Support Laws

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THE PRESENT STATUS OF FAMILY DESERTION AND NON-SUPPORT LAWS*

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The importance of the subject of family desertion and non-support has not decreased during the last six years. Of the replies received to the question addressed to many charitable and humane societies throughout the country, as to whether the evil was decreasing or increasing, nine per cent declare that it is decreasing, twenty-seven per cent think it stationary, while sixty-four per cent declare that it is increasing. It still occupies a large place in the work of every Charity Organization Society, and the economic burden which it imposes rests heavily on other agencies also.

The importance of the subject is emphasized in the social problems connected with children, where it has come to be more fully understood that juvenile delinquency and incorrigibility are often the direct result of the lack of proper provision in the home for the physical wants of the child, and that, even if food and clothing do not render moral teaching and discipline unnecessary, they must precede them before the latter can be effective.

An examination of the laws of all the states at the beginning of 1905 showed that desertion or non-support, or both, was a misdemeanor in forty states, a felony in four and a quasi-criminal offense in one, while in Iowa, Nevada, Oregon, Tennessee and Texas there was no law on the subject.

Since then, because of the increasing interest, fifty-two laws bearing on the offense have been enacted by thirty states and territories, of which some are re-enactments or changes. Those passed by the states of Arkansas, California (2), District of Columbia, Idaho, Maine, Massachusetts (2), Minnesota, Nebraska, Nevada, New

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Hampshire, Oregon, Rhode Island, Tennessee and Texas make the offense misdemeanor; those passed by California (2) (later), Connecticut, Indiana (2), Iowa, Maine (later), Missouri, New York, North Dakota, Ohio, Utah and Washington make the offense felony; four passed by Colorado, Maryland, Michigan and Ohio provide for compensation for men under sentence, and nineteen other laws passed by various states relate to details concerning the definition, the evidence or other features of the law.

In addition to these, the eighteen states of California, Colorado, Connecticut, Illinois, Indiana, Kansas, Kentucky (2), Minnesota, Nebraska, Nevada, Ohio (2), Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Virginia and Washington passed twenty laws making contributory dependency, or responsibility on the part of adults for dependency and neglect in the case of children, a misdemeanor, punishable in many cases by a fine of $1,000 or imprisonment for one year, or both.

The non-support law of Texas, passed in 1907, was declared unconstitutional in 1909, but the contributory dependency law of that year still protects children.

Revising the classification of the laws relating to desertion and non-support as they stood at the end of 1910, after the enactment of all those given above, and listing each state according to the highest grade of offense in any of its laws, the situation was as follows:

Misdemeanor—Alabama
Arizona
Arkansas
Colorado
Delaware
District of Columbia
Florida
Georgia
Idaho
Illinois
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Minnesota
Mississippi
Montana
Nevada
New Hampshire
New Jersey
New Mexico
North Carolina
North Dakota
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Vermont
Virginia
West Virginia
Wyoming—36

Felony—	California	Missouri
	Connecticut	Nebraska
	Indiana	New York
	Iowa	Ohio
	Maine	Utah
	Michigan	Washington
		Wisconsin—13

Tendency of Legislation

In this legislation of the last six years, three principal tendencies are discernible:

1. To make the offense felony, chiefly, and in some cases solely for the purpose of securing the extradition of offenders, but also to make a greater impression upon them, perhaps on the principle of the stronger the dose the better.

2. To hold parents or guardians responsible to the Juvenile Court where they do or omit any acts which contribute to the dependency or neglect, as well as to the delinquency, of the children for whom they are responsible.

3. To establish special courts for dealing with cases of non-support and neglect, such as the Domestic Relations Courts in Buffalo, New York City and Chicago.

This last development is the most recent and not the least important.

The Nature of the Offense

The offense to which these laws relate is peculiar. In reality it consists of failure to support the family. It is often spoken of simply as "family desertion" because, when a man deserts his family, whether to avoid supporting them or for some other reason, he usually does cease to support them, so that non-support, the important part of the condition, is implied by desertion.

It is true that the father has duties, but the man who deserts is often not very helpful as a parent, and if support was furnished, the wife could, in many cases, manage the family as well without him. Desertion often seems to be the graver crime, because the man can make himself comfortable elsewhere, while if he remains at home he must share the poverty which his failure to furnish support causes; but his offense against the public is the same in either case.

Some laws do not cover non-support alone because they make the offense consist of desertion *and* non-support, but the law should

cover either desertion *or* non-support, not only because it then applies whether a man deserts or not, but also because non-support is, by its nature, a continuing offense, for which a man may be punished any number of times, while it has been held in some places that desertion is a single act, for which a man cannot be punished more than once unless he returns to live with his wife and again deserts.

Non-support at first glance seems to be a private matter. It becomes a public offense when society is obliged to furnish support for the family, or when the lack of it destroys the home and demoralizes the children. It should, therefore, be punished, but the punishment is difficult because the question is complicated by the private relations involved. Ordinarily the interests of the offender and the injured party are adverse, or at least separate. The man who picks a pocket may be punished indefinitely without further injury to the person who has lost his purse.

It is not so in the case of non-support because, although it deserves severe punishment as an offense against the public, it is primarily an offense against the family, whose interest is dependent upon the welfare of the man, and for this reason a punishment which is quite appropriate for other crimes is not at all suitable for this. Considering the man only, it would be quite proper to give him a longer sentence than that of the pickpocket, but to do so in the ordinary way would simply aggravate and emphasize the injury to the family. The indignation so justly felt in behalf of innocent women, and especially of helpless children, has prompted the enactment of some laws involving very severe punishment. So far as these deter others from similar acts they may be beneficial; but regard for the interests of the family points to a different course and suggests that in this offense, more than in any other, it is the part of wisdom to seek first, whenever possible, to restore the normal family relations and benefit the family while relieving society of the burden of punishing the offender, and to make the punishment provided, which should be sufficiently severe, tend towards this.

It is the conflict between this appreciation of the gravity of the offense and a regard for the family, who are the first sufferers, which has led to such diverse provisions in the various laws, and the best law is one which combines these opposing considerations in a nice adjustment. It is the failure on the part of many public officials to realize that non-support is anything more than a private matter, and so of little importance, which has interfered with the administration of many laws, and sometimes practically nullified their best features.

The Purpose of the Laws

The ultimate purpose of all these laws is to oblige the offender to support the family properly, and to diminish the burden which non-support lays upon the community; and it is in the light of the complex relations and influences that they must be considered. An attempt to discover what the practical results of them, and of any important changes in them, have been in each state during the last five years revealed many difficulties, because of the conflicting influences and purposes which surround the subject.

A small number of prosecutions may be due to a lack of interest in the subject or to a less number of offenders; the dismissal of a large proportion of the cases brought may indicate a lack of zeal in prosecuting them, or may be due to more earnest efforts to adjust them and secure voluntary support without resorting to a trial in Court; and a proportionately large number imprisoned may show either a certainty of punishment or a failure to effect the desired result without it. The amounts collected for support from men brought into Court would be the best test, but just comparisons are difficult here, also, because the collections are made in different ways in different places, and, when ordered to be paid directly to the wife, no account is usually kept of them.

It was found to be impossible, also, to give even a brief account of the situation in each of the many important states, which present interesting features, within the limited time allotted; and an attempt will, therefore, be made to treat the general situation by topics, bringing out in connection with them the conditions existing in various states which bear upon the main features of the laws as they stand.

It is with a full realization of the difficulty of doing exact justice to any state or community, but with the intention of stating the situation in each case referred to as fairly as possible, in order that both the favorable and unfavorable features of each may be helpful to those who are struggling with this perplexing problem, that some account of the more important developments is undertaken.

States Having Felony Laws

The number of states having felony laws has been increased from four to thirteen. The reason for the change to felony in almost all, if not all, of these has been to make the extradition of deserters who have gone to other states possible. It was wholly unnecessary to make the change on this account, as facts stated hereafter will show, but there was also, in some cases, a belief that a severer punishment would

be more effective. The very passage of such a law indicates an increasing interest in the subject, and, as might have been expected, the laws in some of these states are better enforced than in states which have paid less attention to it.

As to these, it may be stated, generally, that prosecuting officers think the severity of the law an advantage, because it enables them to use the possible punishment as a club to secure compliance with the law, without an actual trial. Almost all these laws contain provisions for release on a bond or promise to furnish support, or to comply with an order to pay a certain sum at stated intervals; and it often happens that when a man is brought before a justice or magistrate, who would otherwise be obliged to bind him over to a higher Court because he cannot himself try the case, the offender, fearing the possible punishment, makes the necessary promise and secures his freedom. There is usually a provision for release in a similar way when the man is brought up in the higher Court, so that in a large number of cases the formality and expense of a jury trial are avoided. So far as the terror inspired by a possible state prison sentence prompts the man to do his duty, it is an advantage, and it is natural that a prosecutor, who occupies a position antagonistic to the man under consideration, should want to be able to punish him most severely in case it finally becomes necessary to try him, thinking little, perhaps, of the additional suffering which this may cause those on account of whose unhappy condition the proceeding has been instituted.

On the other hand, those who are interested in the families, and in the results which the prosecutions have on them, see another side of the question. They find that the wife hesitates to charge her husband with felony, that after having been nerved by ill-treatment to do this she is apt to relent, and that there are difficulties connected with the more severe charge which are absent from a proceeding which is confined to the inferior Courts.

Referring briefly to the situation in the states which have passed felony laws within the last six years, the change has made little difference in Connecticut because of a wise provision that the lower Courts should have power to render final judgment in all cases which did not require a more severe punishment than they were able to inflict under the old law. Not more than two per cent of the cases reported have found their way beyond the Courts in which they were tried under the previous law, and in no case has the penalty for felony been inflicted.

In New York much interest was taken in the new law, particu-

larly by the United Hebrew Charities of New York City, and by the authorities in Buffalo, and many deserters who might have been reached under the previous law, had it not been assumed that they were beyond reach, were brought back. Statements made by Mr. F. E. Wade, of Buffalo, to whose efforts the passage of the law was largely due, at the State Conference in 1909, and by the United Hebrew Charities, show that it has been well worth while to bring these men back, because the sums which they have contributed to the support of their families have been largely in excess of the expense of extradition.

The felony law in New York, however, seems to be used only when extradition is sought, and though the prosecutions in New York City when brought are diligent and successful, they constituted less than eight per cent of the complaints made in 1909 and 1910, when there were 768 complaints, with only fifty-five prosecutions in Court in the two years. The prosecutions under the felony law are apparently less than two per cent of all those for desertion and non-support, the remainder being brought under the misdemeanor and disorderly persons laws, which will be spoken of later in connection with the Domestic Relations Courts.

Six years ago the non-support law of California applied to children only, but was changed to include the wife in 1907, and again changed to make non-support of either wife or children a felony on March 10, 1909. The offense under the cruelty statute was changed to felony also on the following day. Neither law was changed in any other respect, and it is definitely stated by several parties that the purpose of raising the offense to felony was to secure extradition, because a man could not be brought back from another state under a misdemeanor charge, though there is one intimation that it was thought it would be an advantage, by one advocate of the change, to put the cases into the Superior Court. No instance could be found of an attempt to reach a deserter under the former law.

Reports as to the effect of the change in California are conflicting, depending on the point of view. The prosecuting officers in some cities think the severity of the law an advantage because many cases are settled without a final trial, though they also complain that wives relent, and, when a final trial is necessary, there is a delay of perhaps five weeks in San Francisco before the case is heard in the Superior Court, on account of the preparation of the papers, during which time the man lies in the jail. This may be regarded as a salutary period of reflection, which will incline him to yield without trial, or as a needless delay in reaching the end of the case.

The Humane Society of San Francisco, which looks after most of the cases, regrets the change because it has made it more difficult to handle them.

Indiana, at the session of 1907, two days after passing a contributory dependency law making non-support a misdemeanor, passed a bill making desertion and non-support of wife or children felony, and a week later another law, entitled a "child desertion" statute, making non-support of children a felony.

The quick succession of these laws recalls the story of the man who replied to the inquiry of the undertaker, after the death of his mother-in-law, as to whether he should embalm, cremate or bury: "Embalm, cremate and bury; take no chances;" and Indiana seemed to be very well equipped for handling men not inclined to properly support their children.

There is less difficulty in the procedure under a felony law in Indiana than in most other states, because the case may be begun by an affidavit and without an indictment, except for treason and murder, and the law does not require that all felony cases shall be tried by a jury. The laws seem to be working very well. It has been possible to handle in the City Courts of the larger cities, which are always in session, cases which have not involved a punishment greater than misdemeanor, and the procedure in other cases has been less cumbersome than it is in states like Pennsylvania, in which they must be begun by an indictment and tried in every instance before a jury.

In Indianapolis ninety per cent of all prosecutions are brought in the Juvenile Court on a misdemeanor charge, because this Court is better equipped for handling them and they get better attention there.

In Iowa, which had no law making non-support or desertion a crime, all prosecutions must be brought under a felony charge. Here, also, prosecuting officers display much interest and think the severity of the law an advantage, but it is also stated that wives are unwilling to institute or follow up prosecutions, and that the law is too severe. On the whole, the results seem to have been very good.

In Maine, where the law six years ago was quite inadequate, a good misdemeanor statute was passed in 1907, but the offense in this was raised to felony in 1909, in order to provide for extradition, although no attempt had been made to bring back a deserter under the misdemeanor law, and since then Maine has had a felony law only. The number of prosecutions in Portland has been about the same under each law, and the more cumbersome procedure has proved to be a disadvantage, because the only man brought back from any

state was obliged to lie in jail for three months awaiting the session of the higher Court, in which alone he could be tried. The severer sentence has never been imposed.

The law in Missouri was changed to felony as to children and apprentices on June 4, 1909, but little seems to have been accomplished under it because of a decided lack of interest.

No definite report of cases was received from Utah, but the severity of the law which made the offense felony in 1907 is considered to be a disadvantage.

In Washington the change to felony was made in 1907 also, and a good deal of interest has been taken in the execution of the law. It has not been possible to get any data as to the number of prosecutions, but the officials who have charge of them seem well pleased with the law.

Of the four states which had felony laws six years ago, Michigan and Ohio had also misdemeanor laws, while Nebraska and Wisconsin had not. The law in Nebraska seems to have been fairly well enforced, but as the offense consists of desertion and non-support, it was not possible under it to reach non-support cases in which a man did not desert. Instead of changing the existing law to apply to desertion or non-support, it was thought best to pass another law in 1909 which applies to non-support only, and makes the offense a misdemeanor; so that Nebraska now has two laws also.

Wisconsin has been working under a felony law only, and though the prosecutions seem to have been numerous, with much interest taken, complaint has been made that it is difficult to secure convictions because of the serious charge. The number of men committed to the state prison during the five years was sixty, a larger number than in any other state except Ohio, though the average sentence is one year as compared with two years in Ohio.

From Michigan the reports were somewhat meagre. It is stated that the felony law is effective, more so in some respects than the non-support law, but the relative number of prosecutions in each could not be learned.

In no state is the problem of non-support and desertion dealt with more effectively than in Ohio, where the laws have been carefully developed during an experience of many years. The strong Humane Societies, which have charge of the matter in the different cities, have been energetic in developing laws under which they can make their prosecutions effective, and they have a state organization which not only enables them to secure united and well-considered action, but also to head off the sporadic and ill-considered impulses

to improve the law which have left their mark upon so many statutes, especially those relating to desertion and non-support.

The collections in the leading cities are large, but the cases are almost all brought under the misdemeanor law, except when extradition is desired.

Juvenile Courts

On account of the especial fitness of the Juvenile Court to deal with questions involving family relations, there has been a growing tendency to give it preference over the ordinary Courts by bringing in it cases of non-support involving children, either under the contributory dependency provision of the Juvenile Court law, or by the transfer to it of the work formerly done under the non-support law by the Police or Municipal Courts or justices. This change is taking place in Cleveland, where the Humane Society, which two or three years ago depended on the Police Court, now takes all its cases to Judge Addams, partly because he can impose a longer sentence, but mainly because they get better attention; in Columbus, where practically all such cases go to Judge Black; in New Orleans, where Judge Wilson is showing a great interest in this phase of wrongs to children; in Indianapolis, where nine-tenths of the cases are brought before Judge Taylor instead of in the Criminal Court, and in Washington, where Judge DeLacy quickly discovered that non-support lay at the bottom of many of the difficulties in which children found themselves.

There are other places where this tendency is found, but in some it has not yet been developed, because the Juvenile Court is only part of another Court which is very busy, as the Probate Court is in Ohio. Often the Juvenile Court is part of the same Court in which non-support cases were being brought under the former law, at the time the contributory act was passed.

Many Juvenile Court and probation officers concurred in the opinion that the Juvenile Court ought to be given jurisdiction in all non-support cases, because they are in line with the work of the Court. They will undoubtedly receive more intelligent consideration there than in Courts largely occupied with other cases, and any possible objection to those cases in which adults only are concerned can be obviated by arranging for the separate hearing which those involving children should also have.

An amendment, giving the Juvenile Court in the District of Columbia jurisdiction in all such cases, has been urged for four years, and will undoubtedly be passed as soon as the House finds time to give some attention to such matters relating to the District.

Domestic Relations Courts

BUFFALO

The first Domestic Relations Court was instituted in March, 1909, in Buffalo, N. Y., when Judge Simon A. Nash, of the City Court, disliking the idea of having women of good character who were compelled to prosecute cases of non-support come in contact with others of different character, instituted a separate session for such cases. When the Court was reorganized on January 1, 1910, Judge Nash, who is also the Juvenile Court judge, took charge of the Domestic Relations part.

The method of procedure followed is for the Court to ascertain, with the help of a first-class probation officer, the status of the case when it first comes up or at a subsequent hearing, so as to remove the difficulties by an earnest talk if possible. The first object sought is reconciliation where this seems likely to last, next rebuilding of character, and then the collection of money for the support of wife and children. In the beginning attorneys were sometimes employed by one or both sides, but after it was found that the Court was endeavoring to act in the mutual interests of both, the appearance of attorneys became infrequent, and the Court is thus able to deal in its own way with the parties concerned.

When other efforts fail the Court sends the defendant to the penitentiary for six months in default of a bond to support. It is unfortunate that hard labor cannot be made a part of this sentence, and that the man's confinement means that the total support of the family, while it lasts, falls on the public authorities or private charity; but it is stated that the men are usually willing to support their families before the expiration of the term, and, if so, they are released and put on probation, in charge of a probation officer, who has already received information as to both husband and wife, and, knowing all the circumstances, watches over the man after his release, helps secure employment for him and sees that he reports regularly as to his work.

These excellent methods are having the results which might be expected. The number of imprisonments is small, and the collections, which were less than $2,000 in 1909, rose to $40,000 in 1910, and are now being made at the rate of $5,000 per month, with a tendency to increase. Some abandonment cases are also handled successfully in the same way, but not having jurisdiction where the charge is felony Judge Nash can only bind them over for the Grand Jury if his preliminary steps do not succeed.

In its final report, in April, 1910, the Page Commission recommended that in the reorganization of the inferior Courts of criminal jurisdiction in New York City a Domestic Relations Court be established in Manhattan and another in Brooklyn, and this was done when the law subsequently passed took effect on September 1, 1910. These Courts have jurisdiction in all cases of non-support in which the offender is charged with being a disorderly person, as well as in those involving failure to support poor relatives, and two magistrates, who were selected because of their fitness for dealing with such cases and who sit alternately, were assigned to each. The Department of Charities and Corrections has also established a Bureau of Domestic Relations adjacent to each Court to which applications for relief usually come first, and this bureau has been able to adjust many cases and relieve the Court of a great deal of work without any detriment to the interests of those concerned.

Previous Conditions in New York City

Prior to this time the procedure in such cases had not been satisfactory. Women obliged to complain of their husbands had often been forced to sit in Court while the cases of persons charged with various crimes, which were considered to be more important, were disposed of, and when the cases did come up, being only a part of the magistrate's work, they were apt not to receive the attention which they deserved. When continued, as is often necessary in dealing with such cases, it frequently happened that the matter came up at a subsequent hearing before a judge to whom the case was entirely new, which prevented consistent and intelligent treatment of any one case. The result was that the magistrates took little interest in such cases; and, perhaps because of this general feeling in regard to them, some of the probation officers, whose duty it was to look after the defendant when released on an order to support, seemed to think their work consisted in protecting the husband from the wife's importunities rather than in compelling him to make regular payments for the support of the family. Even with the best intentions it was impossible, because of the confusion of judges, for any one of them to do justice to non-support cases, and Judge Cornell has said that he fully realized that he was not able to handle them properly when they came before him.

With the establishment of the Domestic Relations Courts the situation was changed entirely. The four magistrates assigned to them were selected because of their special fitness in character and

temperament for securing the best results in such cases, and no one could take more interest in the accomplishment of this end than these judges do. The very atmosphere of the court room and its surroundings manifests this change. Both complainant and defendant are given ample opportunity to bring out the facts, and the judges make every effort to have the parties adjust their differences without compulsion. This is often accomplished by an earnest admonition from the Court or by a continuance to give the offender an opportunity to take a wiser view of the situation; and, because the magistrates continue to have the control of the cases, they are able, in any subsequent or final order, to be consistent with all that has gone before. It is because of the satisfaction which arises from being able to handle the cases properly in this way, and of an appreciation of the great importance of the interests which they involve, which constant consideration of the subject gives, that the judges have such an interest in their work.

Some Present Drawbacks

There are, however, some drawbacks. First, the Court in Manhattan has no adequate system of probation, and the lack of it is only imperfectly supplied by the Bureau of Domestic Relations. If the Court, through competent probation officers, could thoroughly investigate each case which comes up, and could also follow up men who are ordered to make payments, the advantage would be great. This is now being done in the Court in Brooklyn.

Second, the Courts are not in a position to punish as they deserve the men who fail to comply with their orders or who, for any other reason, need such punishment. The limit of the workhouse sentence is six months, and the labor connected with it is not so hard as to be a deterrent. All contribution to the family stops when the confinement begins, and the result is that in many cases the wife soon joins her husband in asking for his release. Out of 123 men committed by the Domestic Relations Court of Manhattan during the first seven months of its existence, seventy-three, or nearly sixty per cent, had been released up to May 19, 1911, by order of the Court, before completing the sentence, the average duration of their confinement being forty-four days; and as the sentences of thirty-seven out of the remaining fifty had not expired at that time it is possible that this percentage may be still greater.

If these men had been forced to stay until they were willing to support their families, and they themselves had asked to be released

in order to do this, the results might be satisfactory; but when the release is granted because the wife begs for it, as in so many of these cases, it leaves the husband still in at least partial control of the field.

Third, the Domestic Relations Court cannot dispose, as the City Court of Buffalo can, of those non-support cases in which the charge is misdemeanor under Section 482 of the Penal Law, of which there are a considerable number, but must bind them over to the Court of Special Sessions for final action. This restricts the control of the Court over these cases, and interferes with the best results.

Further than this, because a disorderly person is only a quasi-criminal, the Court is unable, in most of the cases which come before it, to reach the offender if he has gone, or afterwards goes, out of the state, which it is so easy for him to do on account of the geographical position of New York City. So far as the merits of the case or the proper action of the Court is concerned, it is really immaterial whether the man complained of is in Tarrytown or Jersey City, and the Court ought to be put in position where it can reach him and deal properly with him in either case.

CHICAGO

Possibly under the influence of what had been done in Buffalo and New York City, a Domestic Relations Court was established as part of the Municipal Court of Chicago in Branch 8, under general order No. 44 of the Chief Justice dated March 14, 1911. By a further order the Court was given jurisdiction over all violations in certain city ordinances relating to offenses in connection with minors, and also of violations of certain state laws relating to desertion, contributory dependency or delinquency, and some others. The Court began operations on April 3, 1911, and the record for the remainder of the month shows a total of 215 cases which originated in the Court or were transferred from criminal branches, of which 122 were disposed of, leaving ninety-three pending. Of these cases ninety, or nearly forty per cent, were for abandonment of wife or child, and forty-six for contributory dependency or delinquency. The Court does not have jurisdiction in certain cases involving cruelty, drunkenness or disorderly conduct as related to husband and wife.

At the end of the first month Judge Goodnow said that the Court had so far met their expectations, but added that they were just reaching the point where they were beginning the "follow-up" work in wife abandonment cases. By this was meant a systematic effort, through influences which might properly be brought to bear, to secure compliance with the orders of the Court or to effect a reconciliation

of the husband with the family. While the time has not been sufficient to reach any conclusions as to the effectiveness of this work, the plan is excellent, and with the appreciative interest taken by the judge in charge of the Court there is no doubt but that it will be successful.

The account given of these Domestic Relations Courts, in which judges specially interested in the subject are dealing in a comprehensive, consistent and intelligent manner with cases of non-support, with the definite purpose, not so much of punishing the offender as of preserving or restoring the normal condition of the family and securing, without punishment, results which discriminate punishment, no matter how severe, could not possibly obtain, furnishes the strongest evidence of a growing realization not only of the great importance of this subject, but also of the particular difficulties connected with it, which have been found so perplexing when the cases were mixed with ordinary criminal cases, which are all of such a different nature.

To give the Domestic Relations Courts in Buffalo and New York City complete jurisdiction over all cases of failure to support wife or children, whether accompanied by abandonment or not, would be a logical and reasonable development of the present situation. The Domestic Relations Court in Chicago, under the law of Illinois, where the offense is a misdemeanor, has such jurisdiction and can reach deserters in other states. The situation in New York State is quite different, because the charge in the cases of which the Domestic Relations Court in New York City has complete jurisdiction, and which is the only one which includes non-support of the wife, is only quasi-criminal, and therefore not extraditable. Under Section 482 of the Penal Law non-support of children is a misdemeanor, which is an extraditable offense, but in these cases the Domestic Relations Court in New York City can only bind the defendant over to the Court of Special Sessions for trial, in case he does not plead guilty or agree to obey the order of the magistrate in the Domestic Relations Court. Some exceptions have already been made to the provision of the Greater New York Charter which gives exclusive jurisdiction of misdemeanors to the Court of Special Sessions, permitting magistrates to dispose of them. If a further exception could be made as to non-support cases, and the Domestic Relations Courts in New York were given jurisdiction over this class of misdemeanors as a judge of the Domestic Relations Court in Buffalo has in all classes of misdemeanor, it would give the Domestic Relations Courts in New York better control of them and relieve the Court of Special Sessions to this extent.

There is no apparent reason why non-support, which now subjects a man to the charge of being a disorderly person, should not be made a misdemeanor, and so a crime, as it actually is, leaving the jurisdiction in these cases relating to non-support, above spoken of, in the Court of Domestic Relations, where it now is, thus giving the Domestic Relations Courts in Buffalo and New York City jurisdiction of all non-support cases under the charge of misdemeanor.

This would clarify the present situation in New York City and would further carry out the idea of the Page Commission by putting the complete responsibility for all these cases in one Court specially constituted for them.

SOME GENERAL CONSIDERATIONS

The Grade of the Offense

A careful consideration of all the facts brought out indicates that the offense should be misdemeanor, and not felony. There are only two reasons for raising the offense to felony, the desire to be able to reach deserters in other states, and an impulse to inflict a severe punishment in order to more effectually repress the evil. The first of these is much the more influential, but is wholly without foundation, while the other is only partly so.

It is because the widespread, but entirely mistaken, impression that extradition under a misdemeanor charge is impossible has done so much to protect deserters, and because I have recently had letters from men in almost every state which has made the offense felony in the last five years, congratulating themselves that they can now do just what they could have done before, and because those in other states where the offense is misdemeanor write me that they have not been able to extradite anybody because the offense is not felony, that I want to make this point perfectly clear.

The right of extradition is conferred by the Constitution of the United States (Art. IV, Sec. 2), which says:

> "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

It is confirmed by the Act of Congress, February 12, 1793, which declares it to be the duty of the executive authority of the state on which the demand is made to cause the fugitive to be delivered up; and by the decision of the Supreme Court of the United States more

than fifty years ago (24 Howard, U. S. 66), which states distinctly, in reference to the words "treason, felony or other crime," that

> "The word 'crime' of itself includes every offense, from the highest to the lowest in the grade of offenses, and includes what are called 'misdemeanors' as well as treason and felony."

The law and the decision cannot be plainer than they are. There has been nothing since to conflict with them in any way, but, on the contrary, every decision of every Court has confirmed them. The right to demand, and the duty to deliver, a fugitive charged with misdemeanor are conferred and imposed by the Constitution of the United States and cannot be abridged or abrogated by any authority in any state.

The contrary impression is probably due to the fact, not only that local authorities do not care ordinarily to go to the expense of bringing back minor offenders, but also to the fact that Governors discourage extradition for petty crimes, in accordance with the resolution adopted at the Conference of Governors on Inter-State Extradition, which was held in New York City in 1887.

This Conference was called by Governor Hill to consider the general subject of extradition, and to arrive at some general understanding on account of certain differences in practice and misunderstandings which had developed. It was made up of a Justice of the Supreme Court of the District of Columbia and the Governors, or their representatives, from nineteen states. After full discussion it drew up a set of rules governing applications for requisitions, which were recommended to all the states and which are still quite closely followed. They are printed on the back of the application for a requisition in many states.

Several proposals were made to agree to a rule not to grant requisitions for certain misdemeanors, but it was suggested that it was hardly becoming for the members to make a public declaration that they intended to violate the Constitution. The conclusion arrived at is expressed in the following resolution, which was finally adopted:

> "Resolved, That it is the sense of this conference that the governors of the demanding states discourage proceedings for the extradition of persons charged with petty offenses; and that except in special cases, under aggravating circumstances, no demand shall be made in such cases."

It will be seen from this that the Conference distinctly refused to make a rule which would hinder any Governor from granting a requisition for a misdemeanor, or for a criminal offense of any degree. The question, in any particular case, depends on public policy, for the

right to demand, and the duty of the Governor on whom the demand is made to grant, are unquestioned.*

But it is sometimes urged that, although this is true, it is practically impossible, because Governors will not honor requisitions for misdemeanor. The world is full of people who do not like things which they have never tasted, and the people who are most certain that extradition for misdemeanor is impossible are those who have never attempted it. This point was not clear to me when I published a study of the family desertion and non-support laws six years ago, and the alternative of felony was there given, with the suggestion that, if needed to make the way to extradition any plainer or easier, the offense should be made felony. So far as this opinion, which I have ever since done my best to correct, has had any influence in the passage of felony laws, I desire to express my sincere regret for it, because the way to extradition cannot be made any plainer than it has been and is now under any misdemeanor statute.

For more than six years I have diligently watched for any instance in which any Governor has refused to grant a requisition for a deserter because the offense was misdemeanor instead of felony, or to honor such a requisition when granted, and I have not been able to find a single one. I went to interview Governor Pennypacker, of Pennsylvania, in 1906, about his refusal to honor a demand for a deserter charged with misdemeanor, and found his only objection was that the papers were not regular. I have since discovered that just after the enactment of the Pennsylvania misdemeanor law of 1903 he was advised by an opinion of the Attorney General (28 Pa. Co. Cts., 379) that requisitions for deserters under the law should be granted, as they have been ever since.

The following table shows the total requisitions, and the number of requisitions for deserters included in these, in each state from which it was possible to obtain reports for the five years from 1906 to 1910, inclusive:

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*The granting of a requisition for a fugitive criminal depends on the executive authority of the governor. The legislature cannot confer or withhold this authority, nor can it or the courts interfere with the executive in the exercise of it; but the obligation which the constitution of a state imposes on the governor to see that the laws of the state are faithfully executed makes it his duty to exercise the power given him to bring back those who transgress these laws, whether the charge is misdemeanor or felony (State vs. Hudson, 2 N. P. 1, Ohio, 1893, confirmed by Supr. Court Ohio, 52 O. S. 673, 1895); and the duty to deliver a fugitive implies a corresponding right and duty on the part of the governor of the state from which he fled to demand his surrender (Work vs. Corrington, 34 O. S. 64, 1877).

While, therefore, a governor has a certain discretion, it seems to be his duty not to refuse, for any insufficient or arbitrary reason, a requisition which has been properly applied for, which he has the right to grant, and which will promote the enforcement of the laws of the state, as requisitions for family deserters, whether the charge is felony or misdemeanor, certainly do.

	Total Requisitions 5 Years	Requisitions for Deserters Included	Offense
Colorado	135	3	Misdemeanor
Connecticut	130	6	Felony (Other crime in 2 of the 6)
Delaware	47	2	Misdemeanor
Georgia	732	13	"
Illinois	1370	128	"
Indiana	409	66	Misdemeanor to Feb. 23, '07— 1 Felony after Feb. 23, '07—65 66
Iowa	417	47	Misdemeanor to Mch. 28, '07 Felony after Mch. 28, '07 (All after Mch. 26, '08)
Kansas	287	5	Misdemeanor
Kentucky	431	1	"
Massachusetts	276	13	" (All since Nov. 13, '08)
Maryland	160	1	"
Mississippi	615	0	"
Montana	75	2	"
Nebraska	214	24	Felony
New Jersey	711	120	Misdemeanor
New Mexico	48	0	"
New Hampshire	12	0	"
New York	666	122	Felony
No. Carolina	228	10	Misdemeanor
Ohio	534	145	Felony
Pennsylvania	726	68	Misdemeanor
Vermont	46	0	"
Washington	160	18	Misdemeanor to Mch. 1, '07 Felony after Mch. 1, '07
Wisconsin	205	43	Felony
Wyoming	46	0	Misdemeanor

The state which issued the largest number of requisitions for deserters during the five years 1906 to 1910, inclusive, was Ohio, with 145, and next to this came, not the Empire State, nor any other which had strengthened the popular error by enacting a felony law, but Illinois, with 128, on the charge of misdemeanor. New York was next, with 122, of which sixty-four applications, more than half, were from New York City and seventeen from Buffalo. This is attributed in New York to the enactment of the felony law, but New Jersey, but little more than one-fourth as large and with only a misdemeanor law, issued 120, only two less, in the same time. Following this, with a wide interval, was Pennsylvania, with sixty-eight, of which thirty-two were on applications from Philadelphia, fifteen from York, and the remainder from a dozen other countries, but not one from Pittsburgh.

Next was Indiana, with sixty-six, all but one in three years and ten months under the felony law, and after it Iowa, with forty-seven in the same portion of the time, Wisconsin with forty-three, Nebraska twenty-four and Washington eighteen. In Massachusetts no effort

was made to reach a deserter for some time before the period in question, nor until about two years and a half ago. Since then thirteen have been brought back, without any trouble, and there were the same number in Georgia during the five years.

The Comparative Number of Requisitions

The following table shows the number of requisitions in each year in the ten states having the largest number for the five years, the initial indicating in each case whether the offense was felony or misdemeanor:

NUMBER OF REQUISITIONS FOR DESERTERS EACH YEAR

	Ohio	Ill.	N. Y.	N. J.	Pa.	Ind.	Ia.	Wis.	Neb.	Wash.
	F.	M.	F.	M.	M.	F.	F.	F.	F.	F.
1906	21	21	20	6	6	1	..	8	7	..
1907	18	22	30	15	16	12	..	13	4	1
1908	24	20	19	32	17	21	6	6	5	5
1909	35	30	22	27	16	21	13	5	5	3
1910	47	35	31	40	13	11	28	11	3	9
	145	128	122	120	68	66	47	43	24	18

These figures cannot be properly compared without taking into account the size of the states to which they refer and the conditions prevailing in each. It is not possible to determine the total number of deserters from each, but a comparison on the basis of relative population is made in the following table, which gives, with the actual number, the number which this rate for the time after the offense was made felony would make in five years, and the rate per hundred thousand of population. It is worthy of notice that the state in which the largest number of requisitions were issued in proportion to the population is only a misdemeanor state.

RATIO OF REQUISITIONS FOR DESERTION TO POPULATION

	Total Req. Deserters	Period	Would be in five yrs.	Pop. 1910	Per 100,000 pop.	Law
N. J.	120	5 yrs.	120	2,537,167	4.8	M
Ind.	66	3 yrs. 10 ms.*	84	2,700,876	3.1	F
Ohio	145	5 yrs.	145	4,767,121	3.0	F
Ia.	47	3 yrs. 9 ms.*	63	2,224,771	2.9	F
Ills.	128	5 yrs.	128	5,638,591	2.3	M
Wash.	18	3 yrs. 10 ms.*	23	1,141,990	2.0	F
Wisc.	43	5 yrs.	43	2,333,860	1.9	F
Neb.	21	5 yrs.	21	1,192,214	1.8	F
N. Y.	122	5 yrs.	122	9,113,614	1.3	F
Pa.	68	5 yrs.	68	7,665,111	.9	M

*After making the offense felony.

These facts need no argument. Whatever other reasons there may be for enacting felony laws, those who seek to pass them for

facilitating extradition are not only wasting their energy, but misleading others, and helping to protect deserters.

The only real trouble is the expense, and that is found under a felony law also, as it is in California to-day, where applications for requisition will not be made by the prosecuting attorney unless some one puts up the money; in Connecticut, where the state's attorney in one city will not extradite anyone because he thinks such a use of public funds questionable, and in Maine, where the first application for a deserter under the felony law met with objection on account of the cost.

Objections to Felony

On the other hand, there are good reasons why the offense should not be made felony. The situation is not one which calls for artillery, for there are women and children in the crowd on whom it is proposed to fire, but for sharpshooters, who can pick off the offenders without hurting the helpless.

a. The severity of the law hinders prosecutions. It is reported from Indiana and from Iowa that wives change their minds, and in California the same experience has seriously interfered with the execution of the law. The Humane Society of San Francisco writes that it is annoying to be obliged to charge people with felony, when the offense is not of the state prison order.

And why should the wives prosecute under such circumstances? Should prosecuting officers, in their zeal to punish, be surprised that the one on whom they depend mainly for the evidence should not be wholly oblivious to the other aspect of the situation?

The number of commitments to the state prison or state reformatory, in the thirteen states having felony laws, is shown by the following table, which gives the date of the law in those states in which it was not in operation for the whole five years, and the average length of the sentence when it could be ascertained.

COMMITMENTS TO STATE PRISON OR STATE REFORMATORY FOR DESERTION OR NON-SUPPORT, 1906-1910.

Date of Felony Law	Prior to Beginning of Period						Mar. 10, 1909	Feb. 25, 1907	Mar. 26, 1907	Apr. 1, 1909	June 4, 1909	Mar. 23, 1907	Mar. 11, 1907
State:	Conn.	Mich.	N.Y.	Neb.	O.	Wisc.	Cal.	Ind.	Ia.	Me.	Mo.	Utah	Wash.
1906			2		15	3							
1907			5		16	10							1
1908			2		17	16		8					3
1909			9		16	13		12	2				1
1910			8		14	18	5	5	3				1
Total	none	33*	26	5*	78	60	5	25	5	none	†	†	6
Average length of sentence					2 yrs.	1 yr.	2 yrs.		1 yr.				

* Years not stated separately.
† No report.

No doubt many of these men deserved the punishment they received, and the number is small compared with the number of cases which must have been involved; but the number in Ohio represents 156 years of confinement, and, though some of these men may have been paroled before the end of the term, such sentences, from the standpoint of the family, seem too hard. The clang of the prison door, as it closed on nearly 100 of these men for two years, may have announced to society that it had done a righteous act in imposing a just punishment, but it brought no joy to the wife, left alone with her children, and she cannot be blamed for faltering instead of assisting society to prolong the desertion, and make the non-support complete. One is reminded of the pedagogue, who was so indignant at finding two boys fighting that he flogged them both for an example.

Lack of Power Weakens Procedure

b. Cases are usually begun before a magistrate, and often do not get further, because the man is released on a bond or promise to support. The disadvantage of the situation is that the lower Court has no power to punish, and can only threaten to bind over for severe treatment, instead of giving the man the alternative of immediate imprisonment with hard labor if he does not at once change his course. In order to overcome this difficulty, in a felony law recently passed in Colorado, the justice is given power to impose imprisonment for three months as one of the conditions of a *suspended* sentence, which seems so much like a real sentence as to remind one of the man who took a nap before he went to sleep. How much better for the lower Court to have power, as it might under a misdemeanor statute, to render final judgment and impose an adequate sentence, which it could suspend as soon as it had had the desired effect?

In such a case in Ohio the Juvenile Court can inflict a sentence of a year, with a fine of $500, which must be worked out at sixty cents per day, making nearly three years and a half in all. No Court needs anything more severe than that.

Conviction Not So Easy

c. If the case reaches the higher Courts as felony, juries are apt not to convict. There have been, of course, many convictions in Ohio and Wisconsin, but a record of the sixteen cases actually brought to trial in Oakland, Cal., last year shows that in five of them the man was found not guilty—left to go absolutely free. I have not found so large a percentage of acquittals under any misdemeanor law. The probation officer of a city in Iowa writes:

"Our law is too drastic. If the offense were a misdemeanor and could be punished by the magistrate direct, more offending husbands would be sent to jail."

A letter written last November from a town in Wisconsin, in which there had been 100 cases of family desertion in the preceding two years, to find out whether there was not some better law than the felony statute under which the state has been working for many years, said:

"We have a law which punishes for this crime very severely, a term in the penitentiary, but it seems almost impossible to get a conviction. The wife, of course, knowing the facts, will, as a rule, not testify and the prosecuting officers have grown weary of attempting to convict."

Some instances of this kind will occur under any law, but these are the opinions of men who are interested only in getting the best results. The Humane Society of San Francisco further says: "The machinery is too big for the material handled."

So said Attorney General Mayer, of New York, six years ago when the District law was under consideration, and this opinion was confirmed by the District Attorney of New York City. Since then an even higher authority has said that the offense ought not to be felony. During the last two years Judge Mayer has had occasion to review the situation as attorney for the Page Commission, for which he drew the report, and, in reply to a question as to whether he still thought family desertion and non-support should be made a misdemeanor and not a felony, he wrote, on May 22, 1911:

"I have not changed my view on this subject and, indeed, am more confirmed in it than ever."

Possible Changes in New York

Nothwithstanding the fact that extradition for non-support under the misdemeanor statute in New York has for many years been possible, no effort was made to bring back deserters from other states under it, and all the extraditions which have taken place have been under the felony statute of 1905, under which cases must be tried in the General Sessions Court. As has been already explained, not more than ten per cent of the complaints made under this charge result in extraditions or trials, but if the extradition could be made under the charge of misdemeanor, the offender, on his return, might be tried in the Domestic Relations Court and punished by imprisonment in the penitentiary up to one year, which seems sufficiently severe, and was equalled in only one case of the eleven men sent to the penitentiary by the General Sessions Court out of the twenty-eight who

were sentenced to imprisonment by that Court during the last five years. The average sentence of these eleven men in the Court of General Sessions was seven months and twenty-seven days, so that the Domestic Relations Court would be able to deal as severely with offenders brought back to it, and on account of their experience in dealing with such cases the judges of the Domestic Relations Court should be better qualified to judge as to the wisdom of going to the expense and trouble of extradition in any given case, and would no doubt be able to dispose of a large number of the complaints which now come to the office of the District Attorney. He would still have the same opportunity as now to investigate all which might come to him, and to throw out all those in which he did not find extradition proceedings warranted.

It seems probable that these modifications of the present laws, which would cause no very great change in the present work of the Domestic Relations Court, would not only lessen the expense by putting the cases into a Court in which the costs are less, but would also get at least as good results, while relieving the crowded General Sessions Court of cases for which it is not specially fitted.

National Desertion Bureau

A noteworthy development as to extradition has taken place in connection with the United Hebrew Charities of New York, which did so much in this direction after the passage of the felony law in 1905. Partly as the result of a report on abandonment made by Morris D. Waldman, at the Conference of Jewish Charities in St. Louis in May, 1910, they established a bureau in charge of a skillful attorney, who succeeded in locating, in nine months, 174 deserters, or about seventy per cent, out of 249 which were brought to his attention. Encouraged by this success the National Desertion Bureau was formed, on February 1, with headquarters in the United Hebrew Charities Building, in New York. With this the members of the Jewish Conference in all parts of the country co-operate. Portraits or minute descriptions of missing men appear each week in the Jewish publication in New York, and are sent to any friends of the deserters who are likely to influence them to return without resorting to the law. This machinery has been very successful, and interesting instances might be related of quick discovery and satisfactory results. Up to May 15 last 135 men had been catalogued.

There is no reason why those in states where the offense is only a misdemeanor should not participate in this excellent scheme for reaching men who are avoiding their family duties.

Misdemeanor Laws Also in Felony States

It should be remembered also that Ohio, New York and Indiana, which have felony laws and which stand in the first rank as to their efforts in dealing with this evil, as well as Michigan, also have laws making the offense a misdemeanor or a quasi-crime, and that it is under these laws that all but a small proportion of the prosecutions are carried on. In response to a question put to an attorney in Ohio, who has had more than ten years' successful experience in handling such cases, as to whether they could secure as good results under a felony law alone, he replied: "We could not handle them at all."

The situation as to these states, therefore, recalls the incident of the kind-hearted man who, in building a barn, cut a small hole for the little cat and a large hole for the big cat, to be used in getting in and out; and it is certainly not worth while, after the structures of statehood have been erected and the means of communication between them opened, under a misdemeanor charge, for more than a hundrd years in such a way that it can never be closed, to cut an additional hole in order to reach deserters who can now be secured by any state under a misdemeanor charge, without making the offense felony.

Extradition Not the Most Important Part

While no law is good which does not permit of extradition, it is much more important that the law should be so framed that it will secure the best results in ordinary non-support cases, and in those in which it is not necessary to go outside the state, than it is to have it effective in reaching men who desert to other states, of which the number is relatively smaller, and who cannot be reached under any charge without considerable trouble and expense. It is unfortunate, therefore, that there should be such a feeling that it is necessary to make the offense felony on this account.

The extremes met in Pennsylvania at the last session of the legislature when a committee from the Associated Charities of Pittsburgh, which has made an exhaustive study of the subject and concluded that a misdemeanor statute was too severe for that state, prepared a bill supplementing the act of 1867, which does not make the offense a crime at all, and applies to any husband and father, whether the family he leaves is in destitute circumstances or not. The directors of the poor, meantime, introduced a bill making the offense felony. The supplement to the act of 1867 was vigorously pushed, but failed to command the support of workers in other parts of the state, and neither bill was passed. In reply to a question as to why the felony

bill was introduced, the directors of the poor, who had heard that the felony law worked well in another state, wrote:

> "We have 95 cases where we are compelled to help support the families of deserting husbands, and we have no way to bring them back to their families.
>
> "We also have a number of cases where the father has deserted his family and, going to other states, gets work at big wages and should be made to support his family, but we are powerless to act under the present law."

In view of the fact that extradition under the law referred to has been going on steadily since its enactment eight years ago, and nine requisitions were secured by Philadelphia last year, it is hard to tell whether the responsibility for this situation rests most heavily upon the officials, or upon the committee which, with all its investigations, has failed, apparently, to keep in touch with what is going on at home; but the thought of the ninety-five deserters abiding in safety under the felony bogey, some of whom at least might be reached by a little effort, makes one feel like striking it down with a very heavy club.

Jury Trial Not Necessary in Pennsylvania

The objection of the committee to a misdemeanor statute in Pennsylvania is that it requires an indictment and jury trial in each case; but an examination of the statutes shows that desertion and non-support, exactly as we know them now, were covered by the poor law of 1771, which antedated the Constitution, with its requirements as to jury trial; and that the offense belonged to a class of minor crimes, like pocket-picking, thieving, vagrancy and disorderly conduct, which have been, at least since the enactment of a law more than 300 years ago in the time of James I, subject to summary jurisdiction by a magistrate, without a jury trial. There is no reason why a man charged with non-support or desertion in Pennsylvania should be tried by a jury now, so far as the constitutional provisions are concerned, even though the legislature sees fit to call the offense by a different name and make the punishment somewhat more severe, because it was not entitled to a jury trial when the Constitution was adopted. Such changes the legislature has a right to make; and if a provision were added granting a jury trial, if demanded, it would no doubt be possible to try almost all the cases without a jury, as under the present law, and as in other states, and also to go after such deserters in other states as those above referred to.

Other Important Points

Further points which seem clear are:

1. The case when brought should be heard in a Court specially devoted to the subject of family relations, rather than to other crimes or property interests, whenever it is possible by any adjustment of the judicial machinery to arrange for this.

The Domestic Relations Courts of Buffalo, New York and Chicago above referred to, which are a development of the last eighteen months, are the outgrowth of an increasing appreciation of the fundamental importance of intelligent and consistent treatment of the economic and moral conditions of family life by a judge who can consider all the facts in their relations to each other, and by a deliberate course, while in intimate contact with them, can secure results which are not possible with a judge who gets but one view of a complicated group of facts, and is obliged to decide offhand just what shall be done, without the opportunity to discover how far the difficulties would yield, or perhaps disappear altogether, under proper treatment. The most skillful physician is apt to make mistakes if limited to a single consultation, and, in any event, cannot prescribe infallibly a course of treatment which later developments, if he were able to observe them, might prove to be wrong even in his judgment.

If the volume of work connected with this subject is not sufficient to occupy the whole time of a Court, it should be arranged that all non-support and desertion cases shall be heard by the same Court, and, if possible, at stated times in separate sessions, as was arranged by Judge Nash, of Buffalo, in March, 1909, letting the Court occupy the remainder of the time with whatever work seems advisable. Such an arrangement must necessarily be made in all except the larger cities, and the best association in such a combination of duties seems to be to let the judge who holds the Juvenile Court preside also over the Domestic Relations Court. The possibility of this will depend upon local conditions, involving the present constitution of the Juvenile Court and the other duties with which the judge who now holds the Juvenile Court is charged. The duties in each are similar in that they involve the most sacred relations of life, the happiness of the entire family, and the future welfare, both moral and material, of the children, as well as the economic interests of the community. They are, therefore, to be classed as relating to persons and distinguished from those relating to property, with which the attention of our Courts has been, until recently, almost wholly engrossed. The value of any object or any interest is so commonly measured by what it is worth in dollars and cents that it has been quite natural for judges, as

well as other people, to be impressed by the claims of property and to give them preference accordingly, because the standard of value can be readily applied and is quickly, and often unconsciously, used.

We have begun to see the less obvious value of that which is being destroyed by conditions which it is possible to prevent or to remedy, and to be impressed by the cost to society, of which each of us is a part, of not giving proper attention to such subjects. A Juvenile Court judge, who magnifies his office, declared recently that his Court was more important than the Supreme Court in the same city, because, while it dealt for the most part with property only, he was dealing with human lives.

Moreover, judges also, as well as people, are apt to have their feelings strongly aroused when great crimes are committed. They become interested in following the prosecutions connected with them to such an extent that if family difficulties are presented in the midst of them they seem to be of such minor importance, relatively, that they are apt not to receive proper consideration. The mingling of these abnormal personal problems with the perplexities of ordinary family life is, therefore, objectionable in the same way as the contact with cases involving property; and the attention to the question of non-support and desertion is best associated with that demanded by the children, who represent the other part of the family.

Judges Devoted to the Work

2. Whatever the arrangement about the work of the Court may be, good results cannot be obtained if the judges are changed from time to time. It is necessary, not only that the judge hear the same class of cases, but that he hear the case relating to the same people when it is continued, or for any reason the parties, or either of them, again appear in Court, in order that he may be entirely familiar with all the circumstances and reach his conclusions in the light of them.

The work of such a Court can best be done by a judge who realizes fully the importance of the problems with which he is dealing, and by a kind of natural selection such men are likely to be chosen for such places. The experience which follows, and the opportunities which arise for making a deep impression upon the lives of many families in restoring the normal relations which are the foundation of society, tend to increase the interest which such a judge finds in his duties, and to make him still better able to handle in a broad and effective way the many-sided cases which daily come before him.

It is evident that such a Court, being specially fitted to decide them correctly and carefully, should have jurisdiction of all cases

of non-support and desertion; it is also necessary that this jurisdiction should be complete, so that the Court may be able to follow the right course instead of having to divide the responsibility, or instead of being obliged after a certain point to pass the cases on to a higher Court, which is certain to be less familiar with them and in which totally different views may be taken.

Hard Labor Absolutely Essential

3. The punishment should always be with hard labor—the harder the better. No non-support law can be effective without this stimulus to the delinquent husband; and it should be certain, not optional with the judge. We know it is needed, and it should be the invariable accompaniment of the sentence.

In many cases there are no provisions for work in jails, but there are miles and miles of public streets and roads in every city and county which need to be cleaned and kept in order, and deserters are not such criminals as to require a very strong guard to prevent escape. As to the objection that work in public exposes a man to the disgrace of being stared at, no man can be put to work on the streets in the execution of such a sentence who is not able to escape the punishment if he tries, and under a proper administration of the law he can have the sentence suspended at any time when he is willing to perform his duties. There need be no hesitation, therefore, in making him work in a public place if he can be most useful there, and so far as exposure to public gaze is concerned, if it shortens the time it takes to accomplish the result required, it will be an advantage.

Compensation to Family Also Important

4. There should be some reasonable compensation for this labor, which should be certain. Oregon had a provision in its non-support law of 1907 that men might be compelled to work on the public roads, and that the County Court in its discretion might pay to the family not to exceed $1.50 per day, but I cannot find that anything was ever paid. Indiana and Maryland each enacted a law in 1907 providing that the excess earnings of men confined in the workhouse for non-support might be paid to the family, but not a dollar has ever been paid in either state, and the wives and children seem to be in the position of the hungry boy who asked for the core of the apple which his companion was devouring, and was told that there "wasn't going to be any core." Colorado also passed a law in 1907 for making jail prisoners work eight hours a day, "when possible," and in that case paying the families of men confined for non-support from fifty cents

to $1.00 per day; but nothing has been paid under this. One explanation is that usually the jailer has a contract for feeding the men at so much per day, and does not want to do anything to diminish the popularity of his resort, or increase the amount of food consumed on his contract. A law just passed provides for many things but omits this. Such laws are of no value, and show that the provision should not be permissive and variable, but mandatory as to a fixed rate of compensation.

In Maine, too, the provision in the law of 1907 for paying fifty cents per day, which was stricken out in 1909, though not much seems to have been done under it, has been restored this year.

In Michigan the law of 1907 as to such payments has had more effect, and the state prison had paid up to this year to families of eighteen men, $3,251.65. No payments prior to 1910 were made in the Detroit House of Correction, but in that year seven families got $785.22. The city of Detroit has begun, since July 1, 1910, to appropriate $5,000 annually for the Poor Commission of the city to pay not to exceed $1.00 per day to the dependent family of a man confined there for any offense, which the large surplus earned well enables them to do.

In the District of Columbia the provision in the law of March 23, 1906, for paying fifty cents per day is positive, and this feature of it has proved to be of the greatest assistance in administering the law. Ohio has had the same experience in regard to the state law passed two years later, in 1908, granting forty cents per day to the families of non-supporters sent to the workhouse, the net amount of the Toledo workhouse law, which was in operation for several years prior to 1905.

The advantage of such a provision is that it permits the judge to punish the man without also punishing the family. The average weekly order in the District is approximately $5, so that while the man is in the workhouse the family gets sixty per cent of this. The effect on the men is salutary, and although the sentence is usually for six months or a year, the average length of confinement, until the men are willing to come out and support their families in accordance with the judge's orders, was only forty-four days in 1909 and sixty days in 1910. In Judge Addams's Court, in Cleveland, the average time was seventy-eight days in 1909 and ninety-eight days in 1910. As a machine for relieving the state of the expense of supporting either the man or his family this arrangement more than pays for itself, and the idea that the money paid for the labor is a burden to the state or county is a decided mistake.

California has just passed a law for working such prisoners on the public roads and paying the family not exceeding $1.50 per day; Massachusetts has passed a law which contemplates the payment of fifty cents per day, New Jersey has enacted a similar law as to two institutions and Utah is said to have made some provision for such payments. Much good is to be hoped for from these laws, but they need, for the best results, the spirit of the supervisor at Roanoke, Va., where, under the state law, men under sentence are compelled to work in the chain gang, and he, although not obliged to, gives the families from $2.00 to $2.50 per week when they do this. The example may be commended to officials in larger cities in other states who do not seem to have done all they could under some of the laws above referred to.

Results of Compensation in Washington

To encourage this movement the results for four years in the District of Columbia, which show that the amount paid for the earnings of prisoners, partly on account of the small appropriation for the first two years, was less than five per cent of the total amount which they so largely assisted the Court in collecting from men under sentence, are given here:

Fiscal year Ended June 30	Appr. Made for Payment of Earnings	Paid for Earnings of Men Under Sentence	Col. from Men Under Suspended Sentence	Totals
1907	$200.00	$200.00	$6,050.59	$6,250.59
1908	200.00	190.50	21,888.56	22,079.06
1909	2,400.00	2,340.00	38,319.65	40,659.65
1910	2,000.00	1,692.50	34,077.88	35,770.38
Total,	$4,800.00	$4,423.00	$100,336.68	$104,759.68

The appropriation for the next fiscal year has been increased to $3,500 and the collections so far for this year have been at the rate of about $36,000.

Probation Officers Needed

5. The Court in which cases are tried should have an adequate force of probation officers, in order to be able to investigate the cases carefully before the Court renders its decision, and also to follow up the men released on orders to support and see that payments are regularly made. The complicated nature of the offense renders this preliminary work by a skillful probation officer very important, and with it the judge can rule far more intelligently than if he has to

balance the conflicting statements of a man and woman whose feelings are aroused by domestic differences. In Judge Addams's Court, in Cleveland, under skillful treatment, many cases are settled without coming before the Court at all, and when they are brought the Judge has a full statement of the circumstances by the probation officer as a guide to aid him in developing the evidence. If, when released on probation, the man fails to pay regularly a notice is promptly sent and the probation officer follows it up.

This is in striking contrast with the situation which has prevailed in New Jersey, in which it was necessary for the wife to first convince the overseer of the poor that it was worth while to make the complaint, next to appear against her husband in Court, and after that to follow up the collections in case he failed to pay as ordered. As the superintendent of one of the leading charitable associations of the state says:

> "No better system could be devised for disturbing the family relationship and making family trouble."

In another city in Ohio, where a competent and interested agent acts as probation officer, investigating the cases carefully, not one out of the 95 brought in 1909 and 115 in 1910, or 210 in all, was dismissed, each man being either imprisoned or released on an order to support.

One great element, an element which has ministered largely to the success of the Domestic Relations Court in Buffalo, is the thorough supervision exercised by the probation officers; and the same testimony comes from New Albany, Indiana, and numerous other cities of intermediate size.

In the District of Columbia the lack of probation officers for adults in the Juvenile Court is supplied through the effective co-operation of the police, by whom the collections are made and who observe the men as they pay over the money. This system works very successfully, but as a rule it is quite essential that the probation force should be ample and that it should be wholly under the direction of the Court, ready for investigation or supervision.

Systematic Collection

6. In order to secure the best results there should be a systematic method of making collections. This can best be done by keeping a record of the orders, and the dates when payments are due, in the Court, just as maturing obligations are watched in a bank, and by promptly following up any delinquent through the probation

officers. Men who will pay a small sum each week if watched will be less likely to pay if the sums are allowed to accumulate. One order recently looked up in Pennsylvania, which was made in 1907 and on which the man had paid nothing since, showed that he owed on it over $600—more than he could earn in a year.

Situations like this are apt to arise where no attention is paid to the matter by the Court unless the wife complains; and it is quite important that the Court should know whether its orders are being obeyed or not, in order to know whether the occasion for them still exists or not.

In some places it is customary to order the payment to be made directly to the wife, and this would be the best way if only the Court knew that the payments were being made, because it brings in no outside influence between husband and wife. In Columbus, however, Judge Black found that this led to uncertainty and jangling, and therefore changed the system so as to have all money paid through the Court.

It has been objected to the system in Washington that it interferes with the normal family life to have a blue-coated officer act as intermediary between the man who earns the money and the wife who disburses it for the family. The criticism deserves careful consideration, but in the choice between the two evils of official contact with the family and of allowing the Court's orders to be disobeyed from lack of supervision, it is well to err on the side of enforcing the Court's decrees, with the expectation that as soon as the necessity ceases the Court will relieve itself of the burden of supervision.

Order to Support as Long as Necessary

7. The law should provide that the order to support shall continue so long as the Court thinks it necessary. This is the case now in Nebraska, in Iowa, and in some other states. When the District law was enacted there was doubt as to whether it would be possible to secure its passage if the time of the order was made too long, and it was accordingly fixed at one year, to which it was necessary to limit the length of the sentence in order to give the Police Court or Juvenile Court jurisdiction. Experience has shown that many cases are not settled within the year, and in order to continue the payments which men are willing to make it is necessary for them to be again brought into Court, which occasions perplexity and annoyance. Under the Pennsylvania law of 1867, as has been stated, collections can run on indefinitely, and no injustice has developed. It is safe to leave the question of dismissing the case from further consideration to the

Court; and by extending the time in this way it is possible, without increasing the severity of the sentence, to have in reserve imprisonment for a year, or the unexpired portion of it, with hard labor, as a stimulus to good conduct and regular payments.

Any Person May Make the Complaint

8. Any person may make the complaint when an offense against the public has been committed. The agent of any organization interested in such cases already has this right, therefore, and the only question is as to how or when it shall be exercised. In many cases it is better that the case should be begun by some one other than the wife. Usually she is the proper person to do this, but when she is deterred by fear, or there is a probability that the chance of reconciliation will be less if she acts, some one else, with a knowledge of the facts, some good probation officer who has been looking after the children, some agent of a Humane Society who has discovered conditions in the family which demand attention, may do so. It is proper to respect the family relations when they are normal, but often they are not.

Illegitimate Children

9. As to including illegitimate children in the law, fifty-four replies out of sixty-one to the question think they should be included, though of these seven say they have had no experience, and only seven say that the present law is adequate, or express any doubt about including them. In Ohio and Nebraska, where they have been for some time included in the non-support laws, those who have the responsibility for looking after non-support cases say emphatically that they should be included, and that none of the injustice or blackmail feared has been known; and the sentiment in Wisconsin, where they have been included for six years, supports this. In many cases present laws embrace only a civil proceeding, with adequate support for a limited number of years, and in some states there are no laws. The question of including them, therefore, depends on local conditions, but it is important that in one way or other support for them be ensured.

Certainty an Important Element

10. The entire proceeding should be certain in its operation, so that the wife who complains and the man who is complained of will know what to expect. If the wife feels that little interest will be

taken in the case, or that if she presses her complaint a punishment unduly severe, depriving her absolutely of support for a long period, may be the result, she will suffer long before instituting proceedings, or perhaps fail to support them when begun. If the man hopes that, for lack of investigation, his plausible excuse will be accepted or that, if it is not, nothing worse can happen than a period of idleness in a jail from which the supplications of his pliant wife will bring him release, he is encouraged to continue his shiftless course.

If, on the other hand, the Court has power to promptly hear and promptly determine the cases, after securing full information as to the facts through a competent probation officer, and to impose imprisonment for a year with labor that is actually hard, to which may be added a fine up to $500 which the man may be compelled to work out, if the Court orders, at the rate of not more than one dollar per day, the non-supporting husband is confronted by a prospect which is not inviting. If it is also known, from the experience in such cases as have come before the Court, that, if deserved, such a punishment will be inflicted, the expectation of possible leniency will be removed. If, at the same time, there is a provision by which the family will receive fifty cents per day so long as the man performs in confinement the enforced hard labor, the wife can be depended upon to support the judge in his desire to inflict such punishment as the offense deserves; and if she and the man both know that as soon as he is ready to resume the discharge of his proper obligations to his family the judge will release him in order that he may do so, it is apparent that we have a complete piece of legal machinery which the judge can regulate so that he knows it will produce the results which he desires, and which is economical because there is nothing to interfere with the operation, which can be stopped as soon as it is no longer needed.

A Uniform Law

It is, perhaps, not essential that there be uniformity in non-support and desertion laws, but the selection of the best tends to uniformity, and if the selection had been intelligently made in laws enacted in the last six years some mishaps would have been avoided.

The Commission on Uniform State Laws, after several years study and deliberation, adopted a uniform law at its meeting in August last, which has already been passed by Kansas, Massachusetts, and perhaps other states, and was introduced in Pennsylvania, Rhode Island and some others. On the principle that its work should not be too radical, and should take the line of least resistance, the Com-

mission left the grade of the crime and the matter of hard labor undecided, expecting the states to settle those points as they saw fit. A modified form, which clears up these points as indicated in the foregoing discussion, and makes several minor changes which further study has suggested, but which in other respects follows the language of the Uniform Law, is here submitted as follows:

AN ACT

Relating to Desertion or Non-Support of Wife or Children, and providing punishment therefor; and to promote Uniformity between the States in reference thereto.

SECTION 1. Be it enacted by, etc.: That any husband who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances; or any parent who shall, without lawful excuse, desert or wilfully neglect or refuse to provide for the support and maintenance of his or her (legitimate or illegitimate) child or children under the age of sixteen years in destitute or necessitous circumstances, shall be guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the .....
(1) with hard labor for not exceeding one year, (2) or both; and should a fine be imposed it may be directed by the Court to be paid in whole or in part to the wife or to the guardian, curator, custodian or trustee of the said minor child or children.

SECTION 2. Proceedings under this Act may be instituted upon complaint made under oath or affirmation by the wife or child or children, or by any other person, against any person accused of either of the above-named offenses. Juvenile Courts shall have original and concurrent jurisdiction in all cases arising under this Act. Justices of the peace, police, city and ..... Courts may try any case arising under this Act, and if, in the opinion of such justice or Court, no greater punishment ought to be imposed, may render judgment therein, in the case of justices of the peace for

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(1) The place of imprisonment will be governed by the local laws.

(2) While there may be no objection to making the term of imprisonment two years, as in the Uniform Law, in states where this does not make the offense felony, and for this reason or some other deprive the lower courts of jurisdiction in the case, experience shows that the power to imprison for one year with hard labor, especially if the possible fine must be worked out in addition, is ample, and the Modified Form has been worded accordingly.

imprisonment not exceeding .....
and in the case of .....
for imprisonment not exceeding .....
subject to the right of the accused to appeal as provided by law in other cases. (3)

SECTION 3. At any time before the trial, upon petition of the complainant and upon notice to the defendant, the Court, or a judge thereof in vacation, may enter such temporary order as may seem just, providing for the support of the deserted wife or children, or both, *pendente lite,* and may punish for violation of such order as for contempt.

SECTION 4. Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty hereinbefore provided, or in addition thereto, the Court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the Court from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically to the wife, or to the guardian, curator or custodian of the said minor child or children, or to an organization or individual approved by the Court as trustee, and to release the defendant from custody on probation, upon his or her entering into a recognizance, with or without surety, in such sum as the Court or a judge thereof in vacation may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in Court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise in full force and effect.

SECTION 5. If the Court be satisfied by information and due proof under oath that the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case

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(3) It is quite important that delay and additional expense be avoided by having the lowest courts empowered to pass sentence and enforce the law in non-support and desertion cases. In some states these lower courts do not have jurisdiction of crimes involving imprisonment for a year, and without such authority could only bind over to a higher court instead of trying the case. Such a provision as this is therefore necessary in such states, and it should be worded in accordance with existing laws in each state as to the jurisdiction of the lower courts. The lower court can always bind over in cases involving a heavier punishment than it is able to inflict. The Connecticut Act of July 6, 1905, is an example of this.

of forfeiture of a recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the Court, be paid in whole or in part to the wife, or to the guardian, curator, custodian or trustee of the said minor child or children.

SECTION 6. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such facts in a civil action. In no prosecution under this Act shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent and compellable (4) witnesses to testify against each other to any and all relevant matters, including the fact of such marriage and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be *prima facie* evidence that such desertion, neglect or refusal is wilful.

SECTION 7. An offense under this act shall be held to have been committed in any county in which such wife, child or children may be at the time such complaint is made. (5) It shall be the duty of the county commissioners, in any case in which application is properly made by the officers responsible for the execution of the law, to provide the funds necessary for extraditing any person charged with an offense under this act who has gone to another state. (6)

SECTION 8. It shall be the duty of the sheriff, warden or other official in charge of the .....(1), in which any person is confined on account of a sentence under this act, to pay over to the wife, or to the guardian, curator or custodian of his or her minor child or children, or to an organization or individual approved by the Court as trustee, at the end of each week, for the support of such wife, child or children, a sum equal to fifty cents (7) for each day's hard labor performed by said person so confined.

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(4) It is of the greatest importance that the wife should be a compellable witness and the Uniform Law is defective in not protecting this point.

(5) This provision is taken from the Ohio law, where it was added to remove any doubt as to the right to bring the suit in the place where the desertion had occurred, and has been found to be quite desirable. It does not seem to have resulted in any injustice or hardship to those accused, but there the law relates to children only.

(6) This not only recognizes the right of extradition for the offense, but removes the obstacle to its enforcement which sometimes results from a conflict of responsibility, and a failure on the part of those who control the funds to realize that as a rule it is a financial advantage to bring back deserters.

(7) This amount has been inserted in the belief that it is as nearly right as possible. The charge against the institution should not be too high, and this is a fair percentage of the average order made by the court under suspended sentence.

SECTION 9. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 10. Repealing clause.

SECTION 11. This act shall take effect the ..... day of .....Anno Domini 19.....

CONCLUSION

It is important that we take a reasonable view of this subject, and that we do not let the impulse to punish make us forget the true purpose of the law, which is to overcome the evil. This can best be done by making the offense misdemeanor, with an adequate punishment by hard labor and a reasonable but certain compensation for the family, so that all non-support cases, whether accompanied by desertion or not, can be tried in one of the lower Courts, which shall have full jurisdiction in working promptly, patiently and steadily for the best results to the family, and to the community.

Washington, D. C.
June 9, 1911.